

Hearn

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-220890

DATE: February 27, 1986

MATTER OF:

Credit Bureau, Inc. of Georgia

DIGEST:

1. General Accounting Office will not consider the merits of an admittedly untimely protest by invoking the "significant issue" exception of its Bid Protest Regulations where the protest--involving the reasonableness of an offered price--does not raise an issue of first impression that would have widespread significance in the procurement community.
2. Where a protester raises a new basis of protest in its comments to the agency report, and the alleged impropriety was apparent on the face of the request for proposals, the new basis of protest is untimely.

The Credit Bureau, Inc. of Georgia has filed an admittedly untimely protest against rejection of its offer and award of a contract to supply reports on individuals, firms, and nonprofit organizations to Credit Bureau Reports, Inc. of Houston, Texas. The General Services Administration (GSA) awarded the protested contract on May 3, 1985, under request for proposals No. FGA-A4-XU221-N, a multiple-award Federal Supply Schedule (FSS) solicitation. The record indicates that GSA advised the protester of the award (as well as of awards to two other firms) during negotiations on May 22. Although GSA rejected the protester's proposal by letter dated May 19, the Credit Bureau, Inc. did not protest to our Office until October 23, i.e., nearly 5 months later.

We dismiss the protest.

Essentially, the Credit Bureau, Inc. argues that its protest raises a significant issue of price reasonableness, so as to invoke an exception to the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. § 21.2(c) (1985).

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The Credit Bureau, Inc. contends that the fixed prices of the awardee, a broker (supplier) for the protester's credit reports, are more than its own maximum proposed prices, and thus allegedly will result in a higher average cost per report to the government.

The significant issue exception to our timeliness rules is used sparingly, so that the rules do not become meaningless, and is limited to issues of widespread importance to the procurement community that we have not considered on the merits in our previous decisions. Griffin Galbraith, B-218933, Sept. 19, 1985, 64 Comp. Gen. _____, 85-2 CPD ¶ 307. We do not find the Credit Bureau, Inc.'s protest significant within the meaning of our regulations, as it neither presents a unique issue of first impression nor involves a question that, if resolved, would benefit parties other than the protester. Taurio Corp., B-219008.2, July 23, 1985, 85-2 CPD ¶ 74.

We have previously considered the issue of price reasonableness in the context of multiple-award FSS contracts and have held that the reasonableness of an offered price is a matter of administrative discretion that therefore is not subject to question unless the determination clearly is unreasonable or resulted from fraud or bad faith (not alleged here). See M.S. Ginn Co., B-215579, Dec. 26, 1984, 84-2 CPD ¶ 701. Additionally, we have indicated that the evaluation of an offer is reasonable when it meets the standards established in GSA's policy statement on Multiple Award Schedule Procurement, 47 Fed. Reg. 50,242 (1982). The policy statement establishes a goal of obtaining discounts from offerors' established catalog or commercial prices that is equal to or better than an offeror's discounts to its most favored customer.^{1/} See M.S. Ginn Co., supra.

While we therefore will not review the protest under our exception for significant issues, we note that the GSA reports that it rejected the protester's offer because the firm would not guarantee its current prices and would not accept the economic price adjustment clause of the

^{1/} GSA has proposed revisions to the policy statement and solicited comments, but the goal of obtaining most favored prices and a requirement that the contracting officer affirmatively determine that prices are fair and reasonable remain unchanged. See 50 Fed. Reg. 50,502 (1985).

solicitation, stating that its 120 owned or affiliated credit bureaus would regard this as price fixing. Thus, agencies would have no way to determine whether placement of an order with the protester, if it were on the FSS, would result in the lowest overall cost to the government, as required by the Competition in Contracting Act of 1984. See 41 U.S.C.A. § 259(b)(3)(B) (West Supp. 1985).

The Credit Bureau, Inc. also alleges that the awardee cannot comply with a solicitation requirement that the contractor have an existing agreement "to accept U.S. Government account information on all commercial non-tax debt, delinquent consumer non-tax debt, contracts, and grants." This basis of protest also appears untimely, but we will not review it in any event, since it concerns the awardee's capability to perform the contract and is thus a matter of responsibility. Our Office does not review affirmative determinations of responsibility except in circumstances not present here. See 4 C.F.R. § 21.3 (f)(5).

In its comments on the agency report, the Credit Bureau Inc. also protests the use of a FSS solicitation to procure credit reports. The protester maintains that individual agency procurements for credit reports are more efficient and cost effective than these FSS contracts, which according to the RFP will be a mandatory source of supply for 15 government agencies.

Each new protest issue must independently satisfy the timeliness requirements of our regulations, which do not contemplate piecemeal presentation or development of protest issues. See Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ ____; Asset, Inc., B-207045, Feb. 14, 1983, 83-1 CPD ¶ 150. Our regulations require that a protest based on alleged improprieties in an RFP that are apparent before the closing date for receipt of initial proposals be filed by that date. 4 C.F.R. § 21.2(a)(1).

In this case, the closing date for receipt of proposals was April 4, but the protest on this basis was not filed until December 20. Since the alleged impropriety was clearly evident on the face of the solicitation, we will not consider the merits of this argument. However, we note that the Administrator of GSA is vested by statute with the authority and responsibility for determining policy and methods of procurement and supply of personal property and nonpersonal services for the use of executive agencies.

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40 U.S.C.A. § 481(a) (West Supp. 1985). In view of this statutory authority, we generally would have no basis to substitute our judgment for that of the Administrator in determining when use of the FSS is appropriate.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel